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July 23rd, 2000

United States Department of Transportation
Dockets 2000-7479-38
400 Seventh Street, S.W., Room Plaza 401
Washington, D.C. 20590

Dear Sir or Madam:

We are writing in order to comment upon proposed Federal Aviation Administration (FAA) regulations concerning public charter operations.

In 1996, the United States Congress limited scheduled passenger service operations at what are defined as uncertificated airports to aircraft equipped with nine passenger seats maximum. The rationale for this limitation was to ensure that flights containing high passenger loads would be limited to providing service only to those airports equipped to react to aircraft crashes within three minutes or less. This legislation was motivated by a concern for public safety.

In order to extend this envelope of safety, and to close the loophole in existing legislation which enabled small commuter carriers to claim charter status in order to evade the existing legislation's limits on scheduled passenger service at uncertificated airports, Congress recently adopted Section 723 of Public Law 106-181, which amends 49 U.S.C. Section 41104. Section 723 reads as follows:

> **(b) Scheduled Operations**
> **(1) In General** – An air carrier, including an indirect air carrier, which operates aircraft designed for more than nine passenger seats, may not provide regularly scheduled charter air transportation for which the general public is provided in advance the schedule containing the departure location, departure time, and arrival location of the flights to or from an airport that is not located in Alaska and that does not have an operating certificate issued under Part 139 of Title 14, Code of Federal Regulations (or any subsequent similar regulations).

> **(2) Definition** – In this paragraph, the term "regularly scheduled charter air transportation" does not include operations for which the departure time, departure location and arrival location are specifically negotiated with the customer or the customer's representative.

However, it appears clear to us that the draft rules published by the Federal Aviation Administration (FAA), are not in compliance with the legislation passed by Congress. Unless we misread the rules, so-called "small" (10-30 seat) scheduled air charter operations are excluded from the requirement that they operate only at certificated airports.

We read the federal law as drawing no distinction between different sizes of charter operations. The language in the section quoted above clearly states "An air carrier . . . which operates aircraft designed for more than nine passenger seats may not provide regularly scheduled charter air transportation. . . . from an airport that . . . does not have an operating certificate . . . ". This is comprehensive language and does not exclude, nor does it provide discretionary power to the FAA to exclude "small" scheduled air charter operations from the legislation.

It is our opinion that the FAA's revised rules as they stand are presently in violation of both the intent and the letter of applicable federal legislation, in that they ignore the clear language of the law and compromise public safety as a result. We believe that the language of the revised rules must be changed to comply with the language in Section 723. **All** public charter operations using aircraft with more than nine passenger seats and that operate under a schedule cannot operate at an uncertificated airport. Therefore, we ask that the rules be changed to conform to the law.

Please include these comments as part of the Notice of Proposed Rulemaking for the above docket.

Thank you for the opportunity to submit these comments.

Respectfully,

John A. Spafford

Andrea Shpall